IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 392 of 2006.

Date of decision: 14.12.2006.

H.P.StateElectricity Board & anr. ….. Appellants.

Vs.

Janardhan …. Respondent.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : Mr. Shrawan Dogra, Advocate.

For the Respondents :

Surjit Singh, Judge (Oral).

Heard and gone through the record.

2. Admitted facts are that the appellant erected five poles on the land of the respondent without seeking his consent under the provisions of Section 67 of the Electricity Act, 2003 and also without following the procedure prescribed in Section 10 of the Indian Electricity Act, 1910, where the owner/ occupier of the land does not consent to the erection of the poles or doing any other works by the licensee.

3. The plaintiff- respondent filed a suit, seeking mandatory injunction directing the appellant- defendant to remove the poles. The trial court decreed the suit, because the act of the appellant-defendant was apparently illegal and amounted to trespass, on account of its having not followed the mandate of law. Appeal filed by

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Whether the reporters of the local papers may be allowed to see the Judgment?

the appellant- defendant in the court of District Judge stands dismissed, though with an option given to the appellant- defendant to pay compensation to the respondent, if it (the appellant) wants the poles to remain in the same place.

4. Now the appellant- defendant has come in appeal to this court. It is submitted by the learned counsel that the civil court did not have the jurisdiction to entertain and try the suit in view of the bar contained in Section 145 of the Electricity Act, 2003, which is reproduced below:-

> **"145. Civil Court not to have jurisdiction:-** No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in section 126 or an appellate authority referred to in section 127 or the adjudicating officer appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

5. His further submission is that the respondent- plaintiff had the remedy to get the compensation for the user of his land under the provisions of the aforesaid Section 10 of the Indian Electricity Act, 1910. The submission is without merit. Clause (d) of sub-section (1) of Section 67 of the Electricity Act, 2003, no doubt says that a licensee may lay and place electric lines, electrical plant and other works on private land, but that is subject to the Rules that may be framed by the appropriate government, under sub-section (2) of this very Section. Rules have been framed by the Central Government in

exercise of its power under sub-section (2) of Section 67, but only in the year 2006. The alleged wrong was committed by the defendant-appellant in the year 2003. Section 185, sub-section (2) (b) says that until the rules are framed, provisions of Sections 12 to 18 of the Indian Electricity Act, 1910 shall be operative. Relevant portion of Section 12 of that Act of 1910, is reproduced below:-

> **"12. Provisions as to the opening and breaking-up of streets, railways and tramways:- (1)** Any licensee may, from time to time but subject always to the terms and conditions of his licence, within the area of supply, or when permitted by the terms of his licence, to lay down or place electric supply- lines without the area of supply, without that area---
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> (a) open and breakup the soil and pavement of any street, railway or tramway;
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> (b) open and breakup any sewer, drain or tunnel in or under any street, railway or tramway;
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> (c) lay down and place electric supply-lines and other works;
>
> (d) repair, alter or remove the same; and
>
> (e) do all other acts necessary for the due supply of energy.
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> (2) Nothing contained in sub-section (1) shall be deemed to authorize or empower a licensee, without the consent of the local authority or of the owner or occupier concerned, as the case may be, lay down or place any electric supply-line, or other work in, through or against any building, or on, over or under any land not dedicated to public use whereon, whereover or whereunder any electric supply-line or work has not already been lawfully laid down or placed by such licensee:
>
> Provided that any support of an overhead line or any stay or strut required for the sole purpose of securing

in position any support an overhead line may be fixed on any building or land or, having been so fixed may be altered, notwithstanding the objection of the owner or occupier of such building or land, if the District Magistrate or in a Presidency- town, the Commissioner of Police by order in writing so directs:

Provided, also, that, if at any time the owner or occupier of any building or land on which any such support, stay or strut has been fixed shows sufficient cause, the District Magistrate or, in a Presidency-town, the Commissioner of Police may by order in writing direct any such support, stay or strut to be removed or altered.

(3). When making an order under sub-section (2), the District Magistrate or the Commissioner of police, as the case may be, shall fix the amount of compensation or of annual rent, or of both, which should in his opinion be paid by the licensee to the owner or occupier.

(4) .....

(5) .....

(6) .....”

6. A bare reading of the above reproduced portion of Section 12 of the Indian Electricity Act, 1910, shows that a licensee is not authorized to carry out any work on the private property except with the consent of the owner/ occupier and if the owner/ occupier does not consent, the licensee has no option but to approach the District Magistrate, for seeking his permission to carry out the work and if such permission is granted, the licensee is authorized to carry out the work. In the present case, neither any attempt was made to obtain the consent of the plaintiff- respondent for erection of poles on his land nor was the District Magistrate moved for granting permission

and award of compensation, because no such plea has been raised nor has any material been placed on record suggestive of these things. Thus the action of the appellant- defendant was absolutely illegal and contrary to the provisions of the Electricity Act, 2003, read with Section 12 of the Indian Electricity Act, 1910, which remained operative until the framing of the rules by the Central Government in the year 2006, in exercise of powers under sub-section (2) of Section 67.

7. The plaintiff- respondent himself could not have approached the District Magistrate for the award of compensation, because as per provisions of Section 12 of the Indian Electricity Act, 1910, as reproduced hereinabove, it is only on the motion of the licensee that the District Magistrate grants the permission and assesses the compensation payable to the owner/ occupier of the property. Since the action of the appellant- defendant is violative of the provisions of the Electricity Act, 2003, read with Section 12 of the Indian Electricity Act, 1910, it (the appellant-defendant) cannot be permitted to say that the civil court does not have the jurisdiction.

8. Next submission made by the learned counsel is that Section 67 of the Electricity Act, 2003, read with Section 12 of the Indian Electricity Act, 1910, provides for payment of the compensation where the private property is used for laying any line or erecting any pole etc., mandatory injunction ought not to have been granted by the two courts below. In support of his contention, he has placed reliance upon Clauses (g) and (h) of Section 41 of the Specific Relief Act. Clause (g) cannot be said to be attracted to the facts of the case

because it is not the case of the defendant- appellant that the plaintiff had at any time acquiesced in the erection of the poles. Clause (h) is also not applicable, because the respondent- plaintiff had no other remedy available, leave alone an equally efficacious remedy. Civil court can not award compensation for the erection of the poles by the appellant- defendant, because compensation for user of private property by a licensee is to be assessed only by the District Magistrate, under Section 12 of the Indian Electricity Act, 1910. So this submission of the learned counsel is also without merit. In any case, the District Judge has given an option to the appellant-defendant to get out of the difficult situation in which it will be put on account of the execution of the mandatory injunction, by directing it to pay the compensation to avoid the execution of the decree of mandatory injunction.

9. For the foregoing reasons, the appeal is dismissed as no substantial question of law arises.

December 14, 2006. **(Surjit Singh)**
(*Hem*) **Judge.**